

**ORIGINAL**

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(1930-1991)

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September 13, 1995

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SEP 13 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**BY HAND DELIVERY**

The Honorable John M. Frysiak  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W.  
Room 223  
Washington, DC 20554

cc 95-93

DOCKET FILE COPY ORIGINAL

**Re: TeleCable of Piedmont, Inc.; Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., and Cencom Cable Television, Inc.; TeleCable of Spartanburg, Inc., and TeleCable of Greenville, Inc. v. Duke Power Company  
PA 90-0003, PA 91-0001, PA 91-0002**

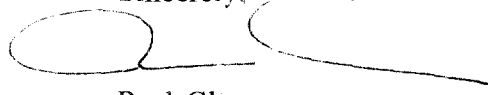
Dear Judge Frysiak:

Pursuant to the procedural schedule in this proceeding, Complainants submit the form of Settlement Agreement between Complainants, TeleCable of Piedmont, Inc.; TeleCable of Spartanburg, Inc.; and TeleCable of Greenville, Inc. (collectively "TeleCable") and Duke Power Company ("Duke"). Although the Settlement Agreement has not been finalized, TeleCable and Duke have agreed upon the rates and refund amounts set forth in paragraph 4 of the attached draft Settlement Agreement. The form of Settlement Agreement is substantially the same as that used to resolve all other pole cases which were designated for hearing. We expect to finalize this Settlement Agreement by September 15, 1995, after which we will file a Motion for Entry of Stipulated Order as to issues between TeleCable and Duke.

The Honorable John M. Frysiak  
September 13, 1995  
Page -2-

Complainants, Cencom Cable Income Partners, II, L.P.; Cencom Cable Entertainment, Inc.; and Cencom Cable Television, Inc. (collectively "Cencom") and Duke have also agreed on all underlying rates at issue in this proceeding which are the same as those set forth in the attached Settlement Agreement. However, Duke has not yet been able to confirm amounts paid, as shown on invoices that have been provided to it by Cencom, from which refund amounts may be calculated. Cencom's calculation is set forth in the attached spreadsheet. We are optimistic that Duke will be able to expeditiously complete its analysis and confirm such invoices, however, it may become necessary to proceed to hearing on this limited issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Ghist", with a long horizontal flourish extending to the right.

Paul Ghist  
Frederick W Giroux

Enclosure(s)

cc: Parties (w/enc.)

**Form of Settlement Agreement**

**between**

**TeleCable of Piedmont, Inc.; TeleCable of Spartanburg, Inc.; and  
TeleCable of Greenville, Inc.**

**and**

**Duke Power Company**

**DRAFT**

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

<b>In the Matter of</b>	)	<b>CC DOCKET NO. 95-93</b>
	)	
<b>TeleCable of Piedmont, Inc.,</b>	)	
<b>TeleCable of Spartanburg, Inc. and</b>	)	<b>PA 91-0001</b>
<b>TeleCable of Greenville, Inc.;</b>	)	<b>PA 91-0002</b>
<b>Cencom Cable Income Partners, II, L.P.,</b>	)	<b>PA 91-0003</b>
<b>Cencom Cable Entertainment, Inc., and</b>	)	
<b>Cencom Cable Television, Inc.</b>	)	
	)	
<b>Complainants,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>Duke Power Company,</b>	)	
	)	
<b>Respondent</b>	)	
	)	

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**SEP 13 1995**

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**TO: The Honorable John M. Frysiaik**  
**Administrative Law Judge**

**SETTLEMENT AGREEMENT**

This settlement agreement is made and entered into as of September \_\_, 1995, by and between TeleCable of Piedmont, Inc., TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc. (collectively, "TeleCable") and Duke Power Company who are parties to the Pole Attachment Complaint now pending before the Federal Communications Commission ("FCC") as CC Docket No. 95-93, PA 91-0001-91-0003

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. TeleCable executes this agreement for itself, its successors, assignees and anyone or any entity claiming through it for TeleCable's claims asserted in this case. This agreement does not affect present or future claims by TeleCable, its predecessors, successors, assignees, subsidiaries or affiliates which concern matters other than concerning Duke Power Company pole attachment rates for 1990 through 1995.

2. Duke Power Company executes this agreement for itself, its successors, assignees, and anyone or any entity claiming through it

3. This agreement does not affect the present or future participation of any of the parties hereto in rulemaking or other similar non-complaint proceedings related to the Act.

4. In full and final settlement of TeleCable's claims concerning Duke Power Company's pole attachment rates at issue in this case, the parties agree as follows:

- a. The rate of \$ 4.23 will be applied from 11/15/90 to 12/31/90; \$ 4.53 for 1991; \$4.62 for 1992; \$ 4.53 for 1993; \$ 5.15 for 1994; and \$ 5.16 for 1995.
- b. Duke will modify its billing and rate setting process as follows:  
Duke will continue to bill semi-annually in January and July;  
changes in rates will be announced with at least 60 days notice prior to July 1 of each year. Changes to the billing for January-June will be due the following January, without interest.

- c. Each of TeleCable's respective Licensing Agreement for Pole Attachments (the "License Agreements") shall be deemed amended without the necessity of (1) signing any further amendments to such agreement or (2) any written notices.
  - d. Duke Power Company agrees to refund to TeleCable \$145,591.24 within ten (10) days after an order approving this settlement.
5. Neither TeleCable nor Duke Power Company will file any pole attachment complaint with the FCC with respect to the pole attachment rates agreed upon above.
6. The parties agree that this agreement is a compromise settlement of disputed claims and that this agreement will not be construed as an admission of liability by either party. This agreement shall not provide third parties with any remedy, claim, liability or other right.
7. This agreement contains the entire agreement between the parties with respect to the matters described herein, and all prior agreements, oral or written presentations, statements, understanding, proposals, and undertakings with respect to such matters are superseded and replaced by the provisions of this agreement. This agreement cannot be modified or terminated except by a written document executed by all parties hereto.

**DRAFT**

8. This agreement may be executed in counterparts.

IN WITNESS THEREOF, the parties hereby execute this agreement effective  
as of the date first written above.

Respectfully submitted,

TeleCable of Piedmont, Inc.  
TeleCable of Spartanburg, Inc.  
TeleCable of Greenville, Inc.

By: \_\_\_\_\_  
Paul Glist  
Frederick W. Giroux  
COLE, RAYWID & BRAVERMAN  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006

Its Attorneys

Duke Power Company

By: \_\_\_\_\_  
Shirley S. Fujimoto  
Kris Monteith  
McDERMOTT, WILL & EMERY  
1850 K Street, N.W.  
Suite 500  
Washington, DC 20005

Its Attorneys

September \_\_, 1995

**Pole Attachment Rate Refund Calculation**

**of**

**Cencom Cable Income Partners, II, L.P.; Cencom Cable Entertainment, Inc.; and  
Cencom Cable Television, Inc.**



## Cencom-Settlement Refund Calc.

Period		Annual Rate	Rate Per Period	Est. Acks	Annual Total	Rate Per Period		Est. Acks	Annual Total	Rate Per Period		Days	Interest Factor	Interest Due	Order	
1991	1/1/91-6/30/91	\$ 4.87	\$ 2.44	7352	\$ 17,902.12	\$ 4.53	\$ 2.27	7352	\$ 16,652.28	\$ 12,000.00	\$ 12,000.00	10%	90	0.024658	\$ 341.22	1st
	1/1/91-6/30/91	\$ 5.16	\$ 2.58	39964	\$ 103,107.12	\$ 4.53	\$ 2.27	39964	\$ 90,518.46	\$ 12,000.00	\$ 12,000.00	9%	91	0.022438	\$ 318.17	2nd
									Total for Per. =	\$ 12,000.00	\$ 12,000.00					
	7/1/91-12/31/91	\$ 5.16	\$ 2.58	40910	\$ 105,547.80	\$ 4.53	\$ 2.27	40910	\$ 92,661.15	\$ 12,000.00	\$ 12,000.00	9%	92	0.022685	\$ 621.22	3rd
										\$ 12,000.00	\$ 12,000.00	9%	92	0.022685	\$ 635.31	4th
1992	1/1/92-6/30/92	\$ 5.09	\$ 2.55	49038	\$ 124,801.71	\$ 4.62	\$ 2.31	49038	\$ 113,277.78	\$ 12,000.00	\$ 12,000.00	8%	90	0.019726	\$ 792.30	1st
										\$ 12,000.00	\$ 12,000.00	7%	91	0.017452	\$ 714.79	2nd
	7/1/92-12/31/92	\$ 5.09	\$ 2.55	50479	\$ 128,469.06	\$ 4.62	\$ 2.31	50479	\$ 116,606.49	\$ 12,000.00	\$ 12,000.00	7%	92	0.017644	\$ 944.56	3rd
										\$ 12,000.00	\$ 12,000.00	6%	92	0.015123	\$ 823.90	4th
1993	1/1/93-6/30/93	\$ 5.09	\$ 2.55	14143	\$ 35,993.94	\$ 4.53	\$ 2.27	14143	\$ 32,033.90	\$ 12,000.00	\$ 12,000.00					
	1/1/93-6/30/93	\$ 5.31	\$ 2.66	47473	\$ 126,040.82	\$ 4.53	\$ 2.27	47473	\$ 107,526.35	\$ 12,000.00	\$ 12,000.00	6%	90	0.014795	\$ 1,150.68	1st
									Total for Per. =	\$ 12,000.00	\$ 12,000.00	6%	91	0.014959	\$ 1,180.68	2nd
	7/1/93-12/31/93	\$ 5.31	\$ 2.66	64558	\$ 171,401.49	\$ 4.53	\$ 2.27	64558	\$ 146,223.87	\$ 12,000.00	\$ 12,000.00	6%	92	0.015123	\$ 1,592.28	3rd
										\$ 12,000.00	\$ 12,000.00	6%	92	0.015123	\$ 1,616.36	4th
1994	1/1/94-6/30/94	\$ 5.31	\$ 2.66	17635	\$ 46,820.93	\$ 5.15	\$ 2.58	17635	\$ 45,410.13	\$ 12,000.00	\$ 12,000.00					
		\$ 5.43	\$ 2.72	40958	\$ 111,200.97	\$ 5.15	\$ 2.58	40958	\$ 105,466.85	\$ 12,000.00	\$ 12,000.00	6%	90	0.014795	\$ 1,710.84	1st
									Total for Per. =	\$ 12,000.00	\$ 12,000.00	6%	91	0.014959	\$ 1,755.44	2nd
	7/1/94-12/31/94	\$ 5.43	\$ 2.72	53144	\$ 144,285.96					\$ 12,000.00	\$ 12,000.00					
		\$ 0.12	\$ 0.06	25302	\$ 1,518.12					\$ 12,000.00	\$ 12,000.00					
					\$ 145,804.08	\$ 5.15	\$ 2.58	53144	\$ 136,845.80	\$ 12,000.00	\$ 12,000.00	7%	92	0.017644	\$ 2,259.55	3rd
										\$ 12,000.00	\$ 12,000.00	7%	92	0.017644	\$ 2,299.42	4th
1995	1/1/95-6/30/95	\$ 5.43	\$ 2.72	53975	\$ 146,542.13	\$ 5.16	\$ 2.58	53975	\$ 139,255.50	\$ 12,000.00	\$ 12,000.00	6%	90	0.014795	\$ 2,069.91	1st
										\$ 12,000.00	\$ 12,000.00	6%	91	0.014959	\$ 2,123.87	2nd
									Total Principal	\$121,153.60				Total Interest	\$22,950.50	
					Total Amounts Paid											
					\$1,263,632.15				TOTAL REFUND AMOUNT	\$144,104.10						

**CERTIFICATE OF SERVICE**

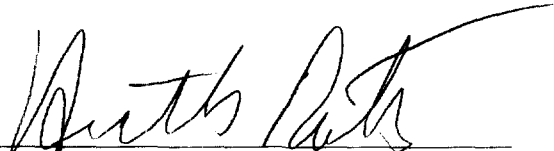
I, Heather Roberts, a legal secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that a copy of the foregoing was sent via first-class, postage pre-paid, United States mail, this 13th day of September, 1995, to the following:

Hon. John M. Frysiak\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street N.W. Room 223  
Washington, D.C. 20554

Duke Power Company  
422 S. Church Street  
Charlotte, NC 28242  
Attn: Rowe Hass

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Jon Reel\*  
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Washington, D.C. 20005

  
Heather Roberts

\*Via Hand Delivery